

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOE J.W. ROBERTS, JR.,

Plaintiff,

Case No. C19-014-TSZ-MLP

V.

VILMA KHOUNPHIXAY, *et al.*,

Defendants.

I. INTRODUCTION

Plaintiff Joe Roberts is a state prisoner who is proceeding with this civil rights action *pro se* and *in forma pauperis*. This matter comes before the Court at the present time on Defendants' motion to strike Plaintiff's amended complaint and on Plaintiff's motion for leave to amend. (Dkt. ## 34, 42.) Plaintiff has filed a brief opposing Defendants' motion to strike (dkt. # 39), and Defendants have filed a brief opposing Plaintiff's motion to amend (dkt. # 43). The Court addresses each of these motions below.

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II. DISCUSSION

A. Defendants' Motion to Strike Amended Complaint

Defendants assert in the instant motion that Plaintiff's amended complaint, which was submitted to the Court for filing on June 11, 2019, should be stricken, and they identify two bases for their motion. (*See* Dkt. # 34.) First, Defendants argue that Plaintiff's amended complaint is procedurally deficient because Plaintiff failed to comply with Rule 15(a)(2) of the Federal Rules of Civil Procedure and with Local Civil Rule ("LCR") 15. (*Id.* at 3.) Second, Defendants argue that even if the Court finds no procedural errors in Plaintiff's submission, the Court should not permit Plaintiff to amend because amendment would be futile. (*See id.* at 3-6.)

1. Compliance with Fed. R. Civ. P. 15(a)(2) and LCR 15

Pursuant to Fed. R. Civ. P. 15(a)(1), a party is permitted to amend its pleading once as a matter of course within specified time periods. As relevant here, Plaintiff had 21 days from the date Defendants filed their answer to Plaintiff's original complaint, or until approximately May 21, 2019, to freely amend his pleading. *See* Fed. R. Civ. P. 15(a)(1)(B). Because Plaintiff did not submit his amended complaint to the Court for filing until June 11, 2019, he was required to obtain written consent from Defendants or seek the Court's permission to amend. *See* Fed. R. Civ. P. 15(a)(2). The record makes clear that Plaintiff did neither of these things. (*See* Dkt. # 35 (Decl. of Michelle Hansen) at ¶¶ 4, 5.)

Plaintiff also failed to comply with LCR 15 which requires that a party seeking to amend a pleading indicate on the amended pleading how it differs from the pleading it amends. Plaintiff states in a preface to his amended complaint that his intention is to add two Defendants to this action, Monroe Correctional Complex (“MCC”) Grievance Coordinator Pete Maxson, and MCC

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1 Associate Superintendent Lisa Anderson and he identifies in a general sense the changes
2 contained within his amended complaint. (*See* Dkt. 33 at 1.) However, this general overview is
3 insufficient to comply with the requirements of LCR 15.

4 Because the record makes clear that Plaintiff failed to comply with the requirements of
5 Fed. R. Civ. P. 15(a) and LCR 15 in filing his amended complaint, the pleading is not properly
6 before the Court.

7 2. *Futility of Amendment*

8 The Court deems it appropriate, despite the procedural deficiencies discussed above, to
9 briefly address Defendants' substantive argument pertaining to the proposed amended complaint.
10 Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that the court should freely give
11 leave to amend "when justice so requires." Five factors are typically considered when assessing
12 the propriety of a motion for leave to amend: (1) bad faith; (2) undue delay; (3) prejudice to the
13 opposing party; (4) futility of amendment; and (5) whether the plaintiff has previously amended
14 his complaint. *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004). Defendants argue that
15 it would be futile for Plaintiff to pursue claims against Associate Superintendent Anderson and
16 Grievance Coordinator Maxson. An amendment to a complaint is futile when "no set of facts can
17 be proved under the amendment to the pleadings that would constitute a valid and sufficient
18 claim or defense." *Missouri ex. Rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017) (citing
19 *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988), overruled on other ground by
20 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

21 In order to sustain a civil rights action under § 1983, a plaintiff must show (1) that he
22 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)

1 that the violation was proximately caused by a person acting under color of state law. *See*
2 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the second prong, a plaintiff
3 must allege facts showing how individually named defendants caused, or personally participated
4 in causing, the harm alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir.
5 1981). A defendant cannot be held liable solely on the basis of supervisory responsibility or
6 position. *Monell v. Department of Social Servs., of City of New York*, 436 U.S. 658, 691-694
7 (1978). Rather, a plaintiff must allege that a defendant's own conduct violated the plaintiff's civil
8 rights. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385-90 (1989).

9 Defendants correctly note, with respect to Associate Superintendent Anderson, that
10 Plaintiff by and large simply adds Ms. Anderson to existing allegations asserted against other
11 Defendants. He alleges no specific facts demonstrating that Ms. Anderson personally
12 participated in causing him any harm of federal constitutional dimension. With respect to
13 Grievance Coordinator Maxson, Plaintiff appears to complain about the manner in which Mr.
14 Maxson processed, or failed to process, Plaintiff's grievances through the Washington
15 Department of Corrections' Offender Grievance Program. The Ninth Circuit has made clear that
16 a prisoner plaintiff does not have a constitutional right to a grievance process, and therefore any
17 claim alleging deficiencies in the grievance process fails to state a claim for relief under § 1983.
18 *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (finding a prisoner did not have a
19 claim for a loss of liberty regarding the processing of his grievances because inmates lack a
20 separate constitutional entitlement to a specific grievance procedure); *Mann v. Adams*, 855 F.2d
21 639, 640 (9th Cir. 1988) (a prisoner does not have a claim for entitlement to a grievance
22 procedure). The Court concurs with Defendants that Plaintiff's proposed amendments would be

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1 futile as Plaintiff fails to identify in his amended complaint any viable claim for relief against
2 either Ms. Anderson or Mr. Maxson.

3 **B. Plaintiff's Motion for Leave to Amend**

4 On August 22, 2019, shortly after briefing on Defendant's motion to strike was
5 completed, Plaintiff filed a motion to amend his complaint. (Dkt. # 42.) Plaintiff indicates in his
6 motion to amend that he wishes to add to this action claims under the Americans with
7 Disabilities and Rehabilitation Acts, and to add claims alleging a failure to protect and a failure
8 to provide medical care. (*See id.* at 1.) Plaintiff also indicates a desire to add MCC Associate
9 Superintendent Lisa Anderson, MCC Grievance Coordinator Pete Maxson, and John Does 1-10
10 as defendants to this action. (*See id.*) Plaintiff did not submit with his motion to amend a
11 proposed amended complaint as is required by LCR 15.

12 While it may be the case that the instant motion constitutes an attempt by Plaintiff to
13 correct the procedural deficiencies noted above with respect to the amended complaint he
14 submitted on June 11, 2019, that proposed pleading does not appear to include the claims
15 Plaintiff seeks to add at this juncture. Without a proposed amended pleading which clearly sets
16 forth all intended claims against all named Defendants, the motion is deficient and therefore not
17 properly before the Court.

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III. CONCLUSION

Based on the foregoing, Defendants' motion to strike Plaintiff's amended complaint (Dkt. # 34) is GRANTED, and Plaintiff's motion for leave to amend (Dkt. # 42) is DENIED. The Clerk is directed to send copies of this Order to Plaintiff, to counsel for Defendants, and to the Honorable Thomas S. Zilly.

DATED this 10th day of September, 2019.

M. J. Rehman

MICHELLE L. PETERSON
United States Magistrate Judge

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